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9 Attorneys for Plaintiffs

10 UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 AGG, a minor, by and through his guardian  
13 ad litem, JESSICA AQUINO; ARG, a  
14 minor, by and through her guardian ad litem,  
15 JESSICA AQUINO; KARLA GONSALEZ,  
16 individually; and AGUSTIN GONSALEZ  
17 JR., individually;

18 Plaintiffs,

19 vs.

20 CITY OF HAYWARD, a municipal  
21 corporation; MARK KOLLER, individually;  
22 PHILLIP WOOLEY, individually;  
23 MICHAEL CLARK, individually; TASHA  
24 DECOSTA, individually; and DOES 1-100,  
25 inclusive,

26 Defendants.

Case No.

**COMPLAINT FOR DAMAGES**

**JURY TRIAL DEMANDED**

27 INTRODUCTION

28 On the evening of November 15, 2018, in Hayward, California, Defendant HAYWARD  
Police Department officers PHILLIP WOOLEY and MICHAEL CLARK shot and killed Decedent  
AGUSTIN GONSALEZ, shooting 13 rounds at the obviously mentally impaired man who possessed  
a standard safety razor blade, about 1.5 inches long. Mr. GONSALEZ threatened no one when  
Defendants shot him, had his hands down in front of his waist, and somehow Defendants, apparently

1 relying on inaccurate information called into 911 in opposition to their own eyes, ordered Mr.  
2 GONSALEZ to “drop the knife”. Mr. GONSALEZ had no knife to drop, stepped slowly toward the  
3 officers after saying the officers “can’t shoot me”, and Defendants, who had closed distance to Mr.  
4 GONSALEZ far quicker than he walked toward them, gave no further warning and simply began  
5 shooting repeatedly. Shockingly, Defendants were always armed with Taser stun guns when they  
6 shot and killed Mr. GONSALEZ. Police officers are required to reasonable less intrusive alternatives  
7 to lethal force, like the Taser under these circumstances. Defendant Officers miserably failed their  
8 mandate to protect the public, including mentally impaired people like Mr. GONSALEZ.

9 Adding insult to this egregious use of force, Defendant CITY OF HAYWARD took nearly a  
10 day to notify Mr. GONSALEZ’s family members of his death, and when they did, they provided the  
11 family with the wrong day of his death.

12 This Complaint seeks redress for the malicious killing of Mr. GONSALEZ by Defendants,  
13 punitive damages against Defendants WOOLEY and CLARK, and re-training and policy change by  
14 Defendant CITY OF HAYWARD to ensure that its police officers properly use the weapons de-  
15 escalation training it provides them to handle mentally impaired people like Mr. GONSALEZ in a  
16 reasonable, safe way instead of simply killing them, even if they happen to be holding a 1 ½ inch  
17 long safety razor blade.

## 18 JURISDICTION

19  
20 1. This action arises under Title 42 of the United States Code, Section 1983. Jurisdiction  
21 is conferred upon this Court by Title 28 of the United States Code, Sections 1331 and 1343. The  
22 unlawful acts and practices alleged herein occurred in the County of Alameda, California, which is  
23 within this judicial district.

## 24 PARTIES

25  
26 2. Minor Plaintiff AGG is the minor son and a co-successor-in-interest to Decedent  
27 AGUSTIN GONSALEZ. He is being represented in this action by his Guardian Ad Litem, JESSICA  
28 AQUINO.

1           3.       Minor Plaintiff ARG is the minor daughter and a co-successor-in-interest to Decedent  
2 AGUSTIN GONSALEZ. She is being represented in this action by her Guardian Ad Litem, JESSICA  
3 AQUINO.

4           4.       Plaintiff KARLA GONSALEZ is the mother of Decedent AGUSTIN GONSALEZ.  
5 She brings this action on her own behalf.

6           5.       Plaintiff AGUSTIN GONSALEZ, JR., is the father of Decedent AGUSTIN  
7 GONSALEZ. He brings this action on his own behalf.

8           6       Decedent AGUSTIN GONSALEZ and each of the Plaintiffs identified in this action  
9 are citizens of the United States of America.

10          7.       Defendant CITY OF HAYWARD (“CITY”) is a municipal corporation, duly  
11 organized and existing under the laws of the State of California. Under its authority, the CITY  
12 operates the Hayward Police Department.

13          8.       At all times mentioned herein, Defendant MARK KOLLER (“KOLLER” herein) was  
14 employed by Defendant CITY OF HAYWARD as Chief of Police for the CITY. He is being sued in  
15 his individual capacity.

16          9.       Defendant PHILLIP WOOLEY (“WOOLEY” herein), is and was at all times herein  
17 mentioned a police officer employed by Defendant CITY OF HAYWARD. He is being sued in his  
18 individual capacity.

19          10.       Defendant MICHAEL CLARK (“CLARK” herein), is and was at all times herein  
20 mentioned a police officer employed by Defendant CITY OF HAYWARD. He is being sued in his  
21 individual capacity.

22          11.       Defendant TASHA DECOSTA (“DECOSTA” herein), is and was at all times herein  
23 mentioned a police officer employed as a Sergeant by Defendant CITY OF HAYWARD. She is  
24 being sued in her individual capacity.

25          12.       Plaintiff is ignorant of the true names and capacities of Defendants DOES 1 through  
26 100, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff is informed and  
27 believes and thereon alleges that each Defendant so named is responsible in some manner for the  
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1 injuries and damages sustained by Plaintiffs as set forth herein. Plaintiffs will amend their complaint  
2 to state the names and capacities of DOES 2-100, inclusive, when they have been ascertained.

3 13. In engaging in the conduct described herein, Defendant police officers acted under the  
4 color of law and in the course and scope of their employment with the CITY. In engaging in the  
5 conduct described herein, Defendant police officers exceeded the authority vested in them as police  
6 officers under the United States and California Constitutions and as police officers employed by  
7 Defendant CITY.

### 8 9 STATEMENT OF FACTS

10 14. On the evening of November 15, 2018, Decedent AGUSTIN GONSALEZ was in the  
11 vicinity of 24633 O'Neil Avenue in Hayward, California, where his former girlfriend, Christina  
12 Rodriguez, resided. Ms. Rodriguez was present along with her sister, Deanna Rubio. Ms. Rodriguez  
13 and Ms. Rubio noticed that Mr. GONSALEZ' behavior was erratic. It was obvious that Mr.  
14 GONSALEZ was in the midst of a mental health crisis, as he threatened to hurt himself with a razor  
15 blade. Ms. Rodriguez shouted at Mr. GONSALEZ as she pled with him not to hurt himself and  
16 reminded him that she loved him.

17 15. At some point that evening, Mr. GONSALEZ and a neighbor of Ms. Rodriguez's  
18 engaged in a verbal altercation that escalated into an apparently mutual fistfight. This was captured  
19 on surveillance video. Based on the video, the neighbor threw the first blow in the altercation, which  
20 went on for several minutes. During the altercation, several breaks were taken by Mr. GONSALEZ  
21 and the neighbor. At some point the neighbor called 911 and inaccurately reported that Mr.  
22 GONSALEZ had a knife and was threatening him. The neighbor made clear to the 911 dispatcher  
23 that Mr. GONSALEZ was "crazy." After this incident, on February 2, 2019, Defendant CITY OF  
24 HAYWARD released press materials including the 911 call and video footage of the incident, as well  
25 as admissions, including its contention that "Dispatch relayed the information provided by the caller",  
26 to responding officers.

27 16. Defendants DECOSTA, WOOLEY and officer CLARK arrived on scene, after being  
28 flagged down by the neighbor who placed the 911 call. Mr. GONSALEZ made several statements,

1 including “Fuck the po-po,” “I don’t give a fuck, I’ll shock her”, and “you can’t shoot me.” In spite  
2 of the fact that Mr. GONSALEZ did not possess a knife, and at most held a safety razor blade with a  
3 length of 1.54 inches in a non-threatening manner walking away from the officers, Defendant  
4 DECOSTA told Defendants WOOLEY and CLARK, as they exited their patrol cars: “Hold on, he’s  
5 threatening.” Plaintiffs contend Defendant DECOSTA made this statement to caution Defendants  
6 WOOLEY and CLARK from approaching Mr. GONSALEZ. Disregarding that caution, Defendants  
7 WOOLEY and CLARK immediately, guns drawn, and Tasers remaining in their holsters on their  
8 persons, strode toward Mr. GONSALEZ.

9 17. Mr. GONSALEZ had been walking in the general direction of Ms. Rodriguez, away  
10 from the officers. Mr. GONSALEZ was not threatening Ms. Rodriguez or anyone at this time. As  
11 Defendants WOOLEY and CLARK ordered Mr. GONSALEZ to drop the knife, Mr. GONSALEZ,  
12 who did not have a knife, turned to his right, said “you can’t shoot me”, rounded the front of a parked  
13 vehicle, and walked slowly toward Defendants WOOLEY and CLARK, facing them as they  
14 continued to approach him, shouting “drop the knife”. Mr. GONSALEZ, who did not have a knife,  
15 held his hands at or below his waist in front of him. The 1 ½ inch safety razor blade was so small  
16 that it is not visible on the video, if indeed it was in Mr. GONSALEZ’s hand at that time. Mr.  
17 GONSALEZ continued to not threaten anyone. Defendants WOOLEY and CLARK never reached  
18 for their Tasers. Instead, Defendants WOOLEY and CLARK fired their guns at Mr. GONSALEZ a  
19 total of 13 times, striking Mr. GONSALEZ approximately 10 times. Mr. GONSALEZ fell to the  
20 ground, where defendants handcuffed him, but they did not provide medical care or first aid efforts to  
21 AGUSTIN GONSALEZ. According to Defendant CITY, the 1 ½ inch safety razor blade was later  
22 recovered from beneath Mr. GONSALEZ’s body.

23 18. Mr. GONSALEZ was no significant threat to Ms. Rodriguez, defendants, or anyone  
24 else. Plaintiffs allege Defendants failed to utilize training they were required to use under these  
25 circumstances, including, but not limited to: Keeping a safe distance from Mr. GONSALEZ, using  
26 de-escalation tactics, setting a perimeter around Mr. GONSALEZ, and using other available less-  
27 lethal weapons. Even then, Decedent was not a significant threat as he only carried a safety razor  
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1 blade with, at most, a 1 ½ inch, especially with three allegedly well-trained police officers at the  
2 scene.

3 19. Based on Defendants WOOLEY's and CLARK's statements at the scene telling Mr.  
4 GONSALEZ to "drop the knife," Plaintiffs allege that each Defendant failed to reasonably assess the  
5 situation, and had they done so, would have recognized the fact that Mr. GONSALEZ possessed no  
6 significant weapon and did not pose a significant threat to anyone.

7 20. Mr. GONSALEZ did not die immediately at the scene of the shooting. Mr.  
8 GONSALEZ suffered severe pain and suffering after the shooting before he later died. He was  
9 transported to a nearby hospital by paramedics, where he passed away later that night. Mr.  
10 GONSALEZ' family was not notified of the incident until the following day in the afternoon, long  
11 after Mr. GONSALEZ had been pronounced deceased, and they were misinformed by being told that  
12 he been shot and killed earlier that day.

13 21. All of the people detained at the scene were transported to the HAYWARD Police  
14 Department, including, but not limited to, Christina Rodriguez and Deanna Rubio, where they were  
15 detained for an excessive period of time and subjected to interrogations before being released hours  
16 later without any charges. Each was held against their will until their release.

17 22. Plaintiffs allege that the killing of AGUSTIN GONSALEZ by Defendants WOOLEY  
18 and Defendant CLARK was malicious, unrelated to legitimate law enforcement purposes, and was  
19 done with a purpose to harm Decedent. Plaintiffs further allege that Defendant DECOSTA failed in  
20 her supervisory role as the Sergeant on-scene to manage Defendants WOOLEY and CLARK to  
21 prevent foreseeable use of unreasonable force and failed to intervene in their use of unreasonable  
22 force.

23 23. Plaintiffs further allege that Decedent's death was the proximate result of Defendant  
24 CITY's failure to reasonably train their police officers in the proper and reasonable use of force,  
25 failure to reasonably train their police officers in responding to mentally impaired people and using  
26 force in a manner to reasonably avoid killing people. Plaintiffs further allege that these substantial  
27 failures reflect Defendant CITY's policies implicitly ratifying and/or authorizing the use of excessive  
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1 force by its police officers and the failure to reasonably train police officers employed by Defendant  
2 CITY in the use of force and in responding to mentally impaired people.

3 24. Plaintiffs further allege that to the extent Defendants may have relied upon  
4 information from 911 callers, or other means of information passed to them wrongly inferring that  
5 Decedent was armed with a knife, such information was contradicted by the reality that their own  
6 personal observations should reasonably have shown: that Decedent was merely in possession of a  
7 razor blade. Plaintiffs therefore allege that Decedent's death was also the proximate result of  
8 Defendant CITY's failure to reasonably train their police officers in the proper use and consideration  
9 of information received from those providing such information, such as 911 callers, reflecting  
10 Defendant CITY's policies implicitly ratifying the improper use and improper consideration of  
11 information received from 911 callers, proximately causing the death of Decedent<sup>1</sup>. There can be no  
12 substitute for an officer's own senses of sight and sound, and other personal observation.

13 25. The killing of decedent AGUSTIN GONSALEZ described herein was brutal,  
14 malicious, and done without just provocation or cause, proximately causing Plaintiff's injuries and  
15 resulting damages.

#### 16 DAMAGES

17 26. Plaintiffs were physically, mentally, emotionally and financially injured and damaged  
18 as a proximate result of Decedent AGUSTIN GONSALEZ's wrongful death, including, but not  
19 limited to, the loss of decedent's familial relationships, comfort, protection, companionship, love,  
20 affection, solace, and moral support. In addition to these damages, Plaintiffs are entitled to recover  
21 for the reasonable value of funeral and burial expenses, pursuant to C.C.P. Sections 377.60 and  
22 377.61.

23 27. Plaintiffs are entitled to recover wrongful death damages pursuant to C.C.P. Sections  
24 377.60 and 377.61 and Probate Code Section 6402(b).

25 28. Pursuant to C.C.P. Sections 377.30, 377.32, and 377.34, plaintiffs are further entitled to  
26 recover for damages incurred by decedent before he died as the result of being assaulted and battered,  
27

28 <sup>1</sup> This is especially true in light of "swatting" events, where people place prank calls to 911, falsely  
claiming violent emergencies for the purpose of drawing a SWAT-type of police response to the  
pranked individual's home.

1 for deprivation without due process of decedent's right to life, and to any penalties or punitive  
 2 damages to which decedent would have been entitled to recover, had he lived. Plaintiffs are further  
 3 entitled to recover for Decedent's own pain and suffering and emotional distress incurred as a  
 4 consequence of Defendants' violations, preceding Decedent's death.

5 29. As a further direct and proximate result of the excessive force and deliberate  
 6 indifference of defendants, and each of them, Plaintiffs have been deprived of Decedent's financial  
 7 support. Decedent worked a full-time job at the Tesla manufacturing plant in Fremont and provided  
 8 for plaintiffs, both emotionally and financially.

9 30 The conduct of the defendant officers was malicious, wanton, and oppressive.  
 10 Plaintiffs are therefore entitled to an award of punitive damages against said individual defendants.

11 31. Plaintiffs found it necessary to engage the services of private counsel to vindicate their  
 12 rights, and the rights of decedent, under the law. Plaintiffs are therefore entitled to recover all  
 13 attorneys' fees incurred in relation to this action pursuant to Title 42 United States Code section  
 14 1988.

#### 15 FIRST CAUSE OF ACTION

16 (Wrongful Death 42 U.S.C. Section 1983)

17 Minor Plaintiffs ARG and AGG against Defendants WOOLEY, CLARK, and DECOSTA Defendant  
 18 DOES 1-50)

19 32. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through  
 20 31 of this Complaint.

21 33. Defendants WOOLEY, CLARK, DECOSTA and DOES 1-50 acted under color of law  
 22 by killing decedent without lawful justification and subjecting decedent to excessive force thereby  
 23 depriving Plaintiff and the decedent of certain constitutionally protected rights, including, but not  
 24 limited to:  
 25

- 26 a. The right to be free from unreasonable searches and seizures by Defendants  
 27 WOOLEY and CLARK's use of excessive force in unreasonably shooting and killing  
 28



Decedent, and in Defendant DECOSTA's failure to reasonably supervise Defendants WOOLEY and CLARK in their response to Decedent.

- b. The right to medical care necessitated by Defendant WOOLEY and Defendant CLARK's unlawful shooting of Decedent, in violation of substantive Due Process guarantees of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

## SECOND CAUSE OF ACTION

(Violations of Plaintiffs' civil rights to familial relationship - 42 U.S.C. section 1983  
All Plaintiffs herein against Defendants WOOLEY and CLARK)

34. Plaintiffs hereby re-allege and incorporate by reference herein paragraphs 1 through 33 of this Complaint.

35. Defendant WOOLEY, acting under color of law, and without due process of law deprived Plaintiffs of their right to a familial relationship with Decedent by use of unreasonable, unjustified deadly force and violence, causing injuries which resulted in decedent's death, all without provocation, in violation of the Fourteenth Amendment to the United States Constitution. Defendant WOOLEY acted maliciously with an intent to harm Decedent unrelated to legitimate law enforcement purposes in killing Decedent.

36. Defendant CLARK, acting under color of law, and without due process of law deprived Plaintiffs of their right to a familial relationship with Decedent by use of unreasonable, unjustified deadly force and violence, causing injuries which resulted in decedent's death, all without provocation, in violation of the Fourteenth Amendment to the United States Constitution. Defendant

1 CLARK acted maliciously with an intent to harm Decedent unrelated to legitimate law enforcement  
2 purposes in killing Decedent

3 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.  
4

5 THIRD CAUSE OF ACTION  
6 (*Monell* - 42 U.S.C. section 1983)

7 Minor Plaintiffs ARG and AGG individually and as successors in interest to Decedent, against  
8 Defendant CITY, KOLLER and DOES 51-100)

9 37. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs 1 through  
10 36 of this Complaint.

11 38. Plaintiffs are informed and believe and thereon allege that high ranking CITY OF  
12 HAYWARD officials, including high ranking police supervisors such as Defendant KOLLER, DOES  
13 51 through 100, and/or each of them, knew and/or reasonably should have known about repeated acts  
14 of misconduct by Defendant Officer WOOLEY, CLARK, DECOSTA and Defendants DOES 1-50,  
15 and/or each of them.

16 39. Despite having such notice, Plaintiffs are informed and believe and thereon allege that  
17 Defendants KOLLER, DOES 51-100, and/or each of them, approved, ratified, condoned, encouraged,  
18 sought to cover up, and/or tacitly authorized the continuing pattern and practice of misconduct and/or  
19 civil rights violations by said police officers.  
20

21 40. Plaintiffs are further informed and believe and thereon allege that as a result of the  
22 deliberate indifference, reckless and/or conscious disregard of the misconduct by Defendant  
23 WOOLEY and Defendant CLARK, and Defendant DOES 1-50 and/or each of them, Defendant  
24 KOLLER, DOES 51-100, and/or each of them, encouraged these officers to continue their course of  
25 misconduct and caused these officers' lack of training, resulting in the violation of the Plaintiffs'  
26 rights as alleged herein.  
27  
28

- a. The right to be free from unreasonable searches and seizures, as guaranteed by the Fourth Amendment to the United States Constitution;
- b. The right to a familial relationship, as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

## 11



1           6.       For cost of suit herein incurred; and

2           7.       For such other and further relief as the Court deems just and proper.

3  
4  
5 Dated: February 7, 2019

**THE LAW OFFICES OF JOHN L. BURRIS**

6  
7                               /s/ John L. Burris

8                               John L. Burris

9                               Attorney for Plaintiffs  
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